



Civil Justice Subcommittee

**Wednesday, February 13, 2019
4:00 – 5:30 PM
404 HOB**

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Wednesday, February 13, 2019 04:00 pm
End Date and Time: Wednesday, February 13, 2019 05:30 pm
Location: Sumner Hall (404 HOB)
Duration: 1.50 hrs

Consideration of the following bill(s):

HJR 53 Single Subject Requirement for Revisions or Amendments to the Constitution by Byrd, Payne
HB 91 Lis Pendens by Altman
HJR 249 Repeal of Constitution Revision Commission by Drake
HB 251 Constitution Revision Commission by Drake

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, February 12, 2019.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, February 12, 2019.

NOTICE FINALIZED on 02/06/2019 4:03PM by Kim.Breanna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 53 Single Subject Requirement for Revisions or Amendments to the Constitution
SPONSOR(S): Byrd, Cord and others
TIED BILLS: IDEN./SIM. **BILLS:** SJR 74, SJR 86

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Jones <i>WSS</i>	Poche <i>MP</i>
2) State Affairs Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida voters can amend the state Constitution by approving an amendment originating from one of five sources: the Legislature, the Constitution Revision Commission (CRC), the Taxation and Budget Reform Commission (TBRC), a citizen initiative, or a constitutional convention. A citizen initiative must embrace only one subject, but proposals originating from the other sources may embrace multiple subjects.

HJR 53 requires any proposed revision or amendment submitted by the CRC or the TBRC to be limited to a single subject. This would prohibit the CRC or TBRC from bundling separate, unrelated issues into a single proposal for consideration by voters.

The joint resolution has a nonrecurring fiscal impact on the Department of State for the publication of the proposed constitutional amendment in newspapers of general circulation in each county and for publication of booklets or posters with the amendment language for use in polling places, as required by s. 101.171, F.S.

The joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 3, 2020. If adopted at the 2020 general election, the resolution would take effect January 5, 2021.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature to appear on the next general election ballot. If placed on the ballot, the Constitution requires 60 percent voter approval for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Constitution is the charter of the liberties of Floridians.¹ It may be amended only if the voters approve an amendment originating from the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, a citizen initiative, or a constitutional convention.² Any initiative proposed by the people must embrace only one subject,³ but proposals that originate from the other sources are not so limited.⁴

Constitution Revision Commission

The Florida Constitution was revised extensively in 1968 by three joint resolutions proposed by the Legislature and approved by the voters. The revisions included establishing the Constitution Revision Commission (CRC) as a means of proposing constitutional revisions to the voters, and the requirement that it convene once every 20 years, beginning in 1977. Three CRCs have convened, in 1977-1978, 1997-1998, and 2017-2018.⁵ The CRC has authority to propose to voters a revision of all or any part of the Florida Constitution.⁶

The CRC is composed of the following 37 members:

- The Attorney General.
- Fifteen members selected by the Governor.
- Nine members selected by the President of the Senate.
- Nine members selected by the Speaker of the House of Representatives.
- Three members selected by the Chief Justice of the Florida Supreme Court.⁷

The Governor must appoint a chair from among the 37 members.⁸ The CRC's task is to examine the Constitution and decide which, if any, amendments to propose to the voters. The amendments must be submitted to the Secretary of State at least 180 days before the next general election.⁹ In turn, the amendments must be submitted to the voters at the next general election held more than 90 days after submission to the Secretary of State.¹⁰ To become effective, an amendment must be approved by at least 60 percent of the votes cast on the measure.¹¹ If an amendment's effective date is not specified, it is effective the first Tuesday after the first Monday in January following the general election.¹²

Taxation and Budget Reform Commission

The Taxation and Budget Reform Commission (TBRC), created in 1988, meets every 20 years to review in detail the state's budgetary process, including the state's revenue and expenditure needs and tax structure, and the productivity and efficiency of the government. The TBRC also examines

¹ *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations omitted).

² Art. XI, Fla. Const.

³ Art. XI, s. 3, Fla. Const.

⁴ Art. XI, ss. 1, 2, 4, 6, Fla. Const.

⁵ Constitution Revision Commission, History, <http://flcrc.gov/about/history.html> (last visited Feb. 7, 2019).

⁶ Art. XI, s. 2(c), Fla. Const.

⁷ Art. XI, s. 2(a), Fla. Const.

⁸ Art. XI, s. 2(b), Fla. Const.

⁹ Art. XI, s. 2(c), Fla. Const.

¹⁰ Art. XI, s. 5(a), Fla. Const.

¹¹ Art. XI, s. 5(e), Fla. Const.

¹² *Id.*

constitutional limitations on taxation and expenditures at the state and local level and reviews the state's comprehensive planning, budgeting and needs assessment processes.¹³

The TBRC is composed of the following 25 members:

- Eleven members selected by the Governor;
- Seven members selected by the President of the Senate; and
- Seven members selected by the Speaker of the House of Representatives.¹⁴

The TBRC also includes four non-voting ex officio members.¹⁵ The TBRC must issue a report proposing to the Legislature any recommended statutory changes related to taxation and budgeting.¹⁶ Similar to the CRC, the TBRC may submit proposed constitutional amendments directly to the people, but only within the subject of taxation or the state budgetary process.

Bundling or "Logrolling"

The Constitution requires each citizen initiative proposal to be limited to one subject.¹⁷ This prevents bundling multiple issues into one proposal, also known as "logrolling." However, neither the CRC nor the TBRC is prohibited from bundling or logrolling.¹⁸ Speaking specifically to the CRC, the Florida Supreme Court recently held:

Unlike proposed amendments that originate through initiative petitions, amendments proposed by the Constitution Revision Commission are not bound by the single-subject rule limiting amendments to one subject. . . . the Florida Constitution expressly authorizes bundling, as it gives the Commission authority to revise the entire constitution or any part of it. The power to amend the whole constitution in one proposal necessarily includes the lesser power to amend parts of the constitution in one proposal.¹⁹

The most recent CRC convened in 2017-2018 and proposed eight amendments to the Florida Constitution, seven of which appeared on the 2018 general election ballot.²⁰ Some of the proposals contained multiple unrelated subjects,²¹ requiring voters to decide whether to vote for an amendment that combined changes they liked with unrelated changes they did not like. One proposal, for example, combined a proposal to ban drilling for oil with a ban on vaping in indoor workplaces.

Effect of Proposed Changes

HJR 53 requires any proposed revision or amendment submitted by the CRC or the TBRC to be limited to a single subject matter. This would prevent either commission from bundling or logrolling different substantive proposals into a single proposal.

The joint resolution must pass each chamber with a three-fifths vote before it may be placed on the ballot. Thereafter, it must be approved by 60 percent of the electors voting on the measure. If approved by the voters, the joint resolution will take effect January 5, 2021.

¹³ Art. XI, s. 6(d), Fla. Const.

¹⁴ Art. XI, s. 6(a), Fla. Const.

¹⁵ *Id.*

¹⁶ Art. XI, s. 6(e), Fla. Const.

¹⁷ Art. XI, s. 3, Fla. Const.

¹⁸ Art. XI, ss. 2, 6, Fla. Const.

¹⁹ *Detzner v. Anstead*, 256 So. 3d 820, 823-24 (Fla. 2018).

²⁰ Constitution Revision Commission, CRC Office – Press Release, <http://flcrc.gov/Media/PressReleases/Show/1099.html> (last visited Feb. 7, 2019); *Detzner v. League of Women Voters of Florida*, 256 So. 3d 803 (Fla. 2018) (removing Revision 8 from the ballot).

²¹ Fred Grimm, *Florida Ballot Proposals Bundled with Disparate Subjects, Deceptive Wording*, SUN SENTINEL (Apr. 27, 2018), <http://www.sun-sentinel.com/opinion/fl-op-column-fred-grimm-florida-ballot-proposals-20180426-story.html>.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, s. 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The Division of Elections must advertise the full text of the amendment twice in a newspaper of general circulation in each county where the amendment will appear on the ballot. The Division must also provide each Supervisor of Elections with either booklets or posters displaying the full text of each proposed amendment,²² regardless of whether the amendment passes.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The mandates provision applies only to general laws, not a joint resolution to amend the Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HJR 53

2019

House Joint Resolution

A joint resolution proposing amendments to Sections 2 and 6 of Article XI of the State Constitution to limit each revision or amendment to the Constitution proposed by the constitution revision commission or the taxation and budget reform commission to one subject and matter directly connected therewith.

Be It Resolved by the Legislature of the State of Florida:

That the following amendments to Sections 2 and 6 of Article XI of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE XI

AMENDMENTS

SECTION 2. Revision commission.—

(a) Within thirty days before the convening of the 2017 regular session of the legislature, and each twentieth year thereafter, there shall be established a constitution revision commission composed of the following thirty-seven members:

- (1) the attorney general of the state;
- (2) fifteen members selected by the governor;
- (3) nine members selected by the speaker of the house of

representatives and nine members selected by the president of the senate; and

(4) three members selected by the chief justice of the supreme court of Florida with the advice of the justices.

(b) The governor shall designate one member of the commission as its chair. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

(c) Each constitution revision commission shall convene at the call of its chair, adopt its rules of procedure, examine the constitution of the state, hold public hearings, and, not later than one hundred eighty days prior to the next general election, file with the custodian of state records its proposal, if any, of a revision or amendment of this constitution or any part of it. Each revision or amendment shall embrace but one subject and matter directly connected therewith.

SECTION 6. Taxation and budget reform commission.—

(a) Beginning in 2007 and each twentieth year thereafter, there shall be established a taxation and budget reform commission composed of the following members:

(1) eleven members selected by the governor, none of whom shall be a member of the legislature at the time of appointment.

(2) seven members selected by the speaker of the house of representatives and seven members selected by the president of the senate, none of whom shall be a member of the legislature at

51 | the time of appointment.

52 | (3) four non-voting ex officio members, all of whom shall
53 | be members of the legislature at the time of appointment. Two of
54 | these members, one of whom shall be a member of the minority
55 | party in the house of representatives, shall be selected by the
56 | speaker of the house of representatives, and two of these
57 | members, one of whom shall be a member of the minority party in
58 | the senate, shall be selected by the president of the senate.

59 | (b) Vacancies in the membership of the commission shall be
60 | filled in the same manner as the original appointments.

61 | (c) At its initial meeting, the members of the commission
62 | shall elect a member who is not a member of the legislature to
63 | serve as chair and the commission shall adopt its rules of
64 | procedure. Thereafter, the commission shall convene at the call
65 | of the chair. An affirmative vote of two thirds of the full
66 | commission shall be necessary for any revision of this
67 | constitution or any part of it to be proposed by the commission.

68 | (d) The commission shall examine the state budgetary
69 | process, the revenue needs and expenditure processes of the
70 | state, the appropriateness of the tax structure of the state,
71 | and governmental productivity and efficiency; review policy as
72 | it relates to the ability of state and local government to tax
73 | and adequately fund governmental operations and capital
74 | facilities required to meet the state's needs during the next
75 | twenty year period; determine methods favored by the citizens of

76 the state to fund the needs of the state, including alternative
77 methods for raising sufficient revenues for the needs of the
78 state; determine measures that could be instituted to
79 effectively gather funds from existing tax sources; examine
80 constitutional limitations on taxation and expenditures at the
81 state and local level; and review the state's comprehensive
82 planning, budgeting and needs assessment processes to determine
83 whether the resulting information adequately supports a
84 strategic decisionmaking process.

85 (e) The commission shall hold public hearings as it deems
86 necessary to carry out its responsibilities under this section.
87 The commission shall issue a report of the results of the review
88 carried out, and propose to the legislature any recommended
89 statutory changes related to the taxation or budgetary laws of
90 the state. Not later than one hundred eighty days prior to the
91 general election in the second year following the year in which
92 the commission is established, the commission shall file with
93 the custodian of state records its proposal, if any, of a
94 revision or amendment of this constitution or any part of it
95 dealing with taxation or the state budgetary process. Each
96 revision or amendment shall embrace but one subject and matter
97 directly connected therewith.

98
99 BE IT FURTHER RESOLVED that the following statement be
100 placed on the ballot:

HJR 53

2019

101 CONSTITUTIONAL AMENDMENT
 102 ARTICLE XI, SECTIONS 2 AND 6
 103 SINGLE SUBJECT REQUIREMENT FOR REVISIONS OR AMENDMENTS TO
 104 THE CONSTITUTION.—Proposing an amendment to the State
 105 Constitution to limit each revision or amendment to the
 106 Constitution made by the constitution revision commission or the
 107 taxation and budget reform commission to one subject and matter
 108 directly connected therewith.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 91 Lis Pendens
SPONSOR(S): Altman, Thad
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mawn <i>CM</i>	Poche <i>hmp</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The term "real property" refers to parcels or tracts of land and includes any rights running with the land, such as an easement, and any structures added or other improvements made to the land. A party wanting to legally establish an interest in real property must record a legal instrument providing notice of that interest in the public records where the property is located. Generally, the first recorded instrument takes priority over any instrument recorded later.

A notice of lis pendens, meaning "pending lawsuit," provides written notice that a lawsuit has been filed concerning title to or some interest in real property. Where a party records a notice of lis pendens, the final disposition of the court relates back to the recording of the notice of lis pendens, generally barring any document recorded after the notice of lis pendens from affecting the determination.

In 2016, the Fourth District Court of Appeal (Fourth DCA) ruled that lis pendens protection terminated when the time to appeal the final judgment of foreclosure expired. The effect of that ruling left a temporal gap between the entry of the final judgment and the judicial sale during which time liens and other interests could attach to a property and affect title. The court reversed that ruling on rehearing, holding instead that a notice of lis pendens remains valid through the judicial sale. In doing so, the court may have inadvertently created a temporal gap between the judicial sale and the recording of an instrument transferring title during which time liens and other interests could attach to a property and affect title.

HB 91 provides that, in a foreclosure proceeding, a valid recorded notice of lis pendens remains in effect through the recording of an instrument transferring title pursuant to a judicial sale. This clarification effectively eliminates the temporal gap possibly created by the Fourth DCA and preserves the widely understood interpretation of the protections afforded by the lis pendens statute.

The bill clarifies existing law and applies to pending actions at the time of the effective date.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The term "real property" refers to parcels or tracts of land and includes any rights running with the land, such as an appurtenant easement,¹ and any structures added or other improvements made to the land.² A party wanting to legally establish an interest in real property must record a legal instrument in the public records of the county where the property is located.³ Generally, the first recorded instrument takes priority over any instrument recorded later.⁴ Thus, Florida operates as a "notice" state, protecting future property owners from most claims arising but not recorded before the purchase of a property.⁵

Lis Pendens

A notice of lis pendens⁶ provides constructive notice to all persons of pending litigation relating to certain identified property.⁷ A valid notice of lis pendens must contain:

- The names of the parties to the lawsuit;
- The date the lawsuit was filed, the date of the clerk's electronic receipt, or the case number of the lawsuit;
- The name of the court in which the lawsuit is pending;
- A description of the property involved or to be affected; and
- A statement of the relief sought as to the property.⁸

After the recording of a notice of lis pendens, the holder of any unrecorded interest or lien who fails to timely intervene in the proceedings may lose his or her right to enforce those interests:

" . . . [T]he recording of such notice of lis pendens . . . , constitutes a bar to the enforcement against the property described in the notice of all interests and liens, . . . unrecorded at the time of recording the notice unless the holder of any such unrecorded interest or lien intervenes in such proceedings within 30 days after the recording of the notice. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and **if such proceedings are prosecuted to a judicial sale of the property described in the notice, the property shall be forever discharged from all such unrecorded interests and liens.** . . . "⁹

¹ A parcel with an appurtenant easement benefits from a right to use the land of another for a special purpose. Black's Law Dictionary 352 (6th ed. 1995).

² S. 475.801(10), F.S.

³ S. 695.01, F.S.

⁴ *F.J. Holmes Equip., Inc. v. Babcock Bldg. Supply, Inc.*, 553 So. 2d 748 (Fla. 5th DCA 1989) ("The first rule is that competing interests in land have priority in order of their creation in point of time...")

⁵ *Lesnoff v. Becker*, 135 So. 146 (Fla. 1931) ("Under our recording statutes, subsequent purchasers, acquiring title without notice of a prior unrecorded deed, mortgage, or transfer of real property, or any interest therein, will be protected against such unrecorded instrument ...").

⁶ "Lis pendens" means a pending lawsuit. Black's Law Dictionary 643 (6th ed. 1195).

⁷ S. 48.23, F.S.

⁸ S. 48.23(1)(c), F.S.

⁹ S. 48.23(1)(d), F.S.

The Ober Opinions

Ober, Withdrawn

On August 24, 2016, the Fourth District Court of Appeal (Fourth DCA) issued an opinion in *Ober v. Town of Lauderdale-by-the-Sea* (Ober).¹⁰ The court, seeking to determine whether the lis pendens statute bars the enforcement of liens recorded after a final judgment of foreclosure but before a judicial sale of the property, recognized that the lis pendens statute “does not provide an end date for the lis pendens.”¹¹ Seeking to identify an end date to “avoid the absurd result of a lis pendens precluding any lien from ever being placed on the property in perpetuity,” the court declared that:

The plain meaning of [the] provision indicates that the action itself is the actual lis pendens, which takes effect if and when a notice is filed. The lis pendens therefore logically must terminate along with the action. The “action” in this case was the foreclosure action... which terminated thirty days after the court’s issuance of a final judgment.¹²

In consideration of the foregoing, the court ultimately held that “a lis pendens bars liens only through final judgment, and does not affect the validity of liens [recorded] after that date, even if they are [recorded] before the actual sale of the property.”¹³

Ober, the Substituted Opinion

On January 25, 2017, the Fourth DCA granted rehearing and issued a substitute opinion essentially reversing its *Ober* opinion.¹⁴ In the substitute opinion, the court stated:

The language of the [lis pendens] statute is broad, applying to “all interests and liens.” Significantly, the statute expressly contemplates that its preclusive operation continues through a “judicial sale.” This is consistent with how foreclosure suits operate in the real world.”¹⁵

In issuing this substituted opinion and describing the exclusive effect of a notice of lis pendens as continuing “through a ‘judicial sale,’” the court may have inadvertently created a temporal gap between a judicial sale and the recording of an instrument transferring title during which liens may attach to a foreclosed property.¹⁶ In some cases, this gap may last “days, weeks, or months.”¹⁷ Furthermore, the court may have rejected “the widely understood interpretation of the statute, that... a lis pendens remains in effect through the recording of an instrument transferring title pursuant to a judicial sale.”¹⁸

Ober, Certiorari Denied

The Fourth DCA concluded its substituted *Ober* opinion by recognizing that extending the effect of a lis pendens on a foreclosed property through the judicial sale creates a potential code enforcement

¹⁰ *Ober v. Town of Lauderdale-by-the-Sea*, 4D14-4597 (Fla. 4th DCA 2016), withdrawn. The withdrawn opinion is available without reference, pages, or volume numbers at <https://caselaw.findlaw.com/fl-district-court-of-appeal/1746796.html>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Ober v. Town of Lauderdale-by-the-Sea*, 218 So. 3d 952, 954 (Fla. 4th DCA 2017).

¹⁵ *Id.*

¹⁶ Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Proposal to Amend Section 48.23, Fla. Stat. (Lis Pendens)* (Oct. 10, 2017).

¹⁷ *Id.*

¹⁸ *Id.*

problem, as it likely prevents the attachment of a code enforcement lien¹⁹ during this window.²⁰ The court recognized that, if a code enforcement violation arises on a property in foreclosure after the 30-day intervention window and fines accrue, a local government could not use a code enforcement lien to collect said fines until after title to the property transfers pursuant to a judicial sale. This problem, according to the court, falls within the province of the Legislature.²¹

On February 7, 2017, Lauderdale-by-the-Sea filed a Motion for Certification of a Question of Great Public Importance to the Florida Supreme Court.²² On March 22, 2017, the Fourth DCA granted the motion and certified the following question:

“Whether, pursuant to section 48.23(1)(d), Florida Statutes, the filing of a notice of lis pendens at the commencement of a bank’s foreclosure action prevents a local government from exercising authority granted to it by Chapter 162, Florida Statutes, to enforce code violations existing on the foreclosed property after final foreclosure judgment, where the local government’s interest or lien on the property arises after final judgment and did not exist within 30 days after the recording of the notice of lis pendens.”²³

On September 6, 2017, the Florida Supreme Court issued an order declining to exercise jurisdiction and denying Lauderdale-by-the-Sea’s Petition for Review.²⁴

Effect of Proposed Changes

HB 91 amends s. 48.23, F.S., to clarify that a notice of lis pendens precludes the attachment of liens or other interests on a foreclosed property until after the recording of an instrument transferring title pursuant to a judicial sale. This clarification effectively eliminates the temporal gap possibly created by the substituted *Ober* opinion and preserves the widely understood interpretation of the lis pendens statute.

The bill applies to actions pending on the effective date of the act.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 48.23, F.S., relating to lis pendens.

Section 2: Applies the proposed changes to actions pending on the effective date of the bill.

Section 3: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁹ Local governments may issue daily fines if a property owner fails to timely correct a code violation. Once recorded, these fines become a lien against the real property on which the code violation occurred, known as a code enforcement lien. See Ch. 162, F.S., generally.

²⁰ *Id.*

²¹ *Id.*

²² *Ober v. Town of Lauderdale-by-the-Sea*, No. 4D14-4597 (Fla. 4th DCA 2017).

²³ *Id.*

²⁴ *Town of Lauderdale-by-the-Sea v. Ober*, 2017 WL 3883662 (Fla. 2017).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not address the potential code enforcement issue identified by the Fourth DCA in the substituted *Ober* opinion. Where code violations arise on a property in foreclosure after the expiration of the 30-day window for interested parties to intervene in judicial proceedings, local governments could face significant delays in enforcing said code violations through a code enforcement lien. This could also significantly delay the collection of fines for code violations.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 91

2019

A bill to be entitled
An act relating to lis pendens; amending s. 48.23,
F.S.; providing that a person who acquires for value a
lien on property during the course of specified legal
actions takes such lien free of claims in certain
circumstances; specifying the effect of a valid,
recorded notice of lis pendens in certain
circumstances involving a judicial sale; providing
applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (b) and (d) of subsection (1) of
section 48.23, Florida Statutes, are amended to read:

48.23 Lis pendens.—

(1)

(b)1. An action that is filed for specific performance or
that is not based on a duly recorded instrument has no effect,
except as between the parties to the proceeding, on the title
to, or on any lien upon, the real or personal property unless a
notice of lis pendens has been recorded and has not expired or
been withdrawn or discharged.

2. Any person acquiring for value an interest in, or lien
upon, the real or personal property during the pendency of an
action described in subparagraph 1., other than a party to the

26 proceeding or the legal successor by operation of law, or
27 personal representative, heir, or devisee of a deceased party to
28 the proceeding, shall take such interest or lien exempt from all
29 claims against the property that were filed in such action by
30 the party who failed to record a notice of lis pendens or whose
31 notice expired or was withdrawn or discharged, and from any
32 judgment entered in the proceeding, notwithstanding the
33 provisions of s. 695.01, as if such person had no actual or
34 constructive notice of the proceeding or of the claims made
35 therein or the documents forming the causes of action against
36 the property in the proceeding.

37 (d) Except for the interest of persons in possession or
38 easements of use, the recording of such notice of lis pendens,
39 provided that during the pendency of the proceeding it has not
40 expired pursuant to subsection (2) or been withdrawn or
41 discharged, constitutes a bar to the enforcement against the
42 property described in the notice of all interests and liens,
43 including, but not limited to, federal tax liens and levies,
44 unrecorded at the time of recording the notice unless the holder
45 of any such unrecorded interest or lien intervenes in such
46 proceedings within 30 days after the recording of the notice. If
47 the holder of any such unrecorded interest or lien does not
48 intervene in the proceedings and if such proceedings are
49 prosecuted to a judicial sale of the property described in the
50 notice, the property shall be forever discharged from all such

51 | unrecorded interests and liens. A valid recorded notice of lis
52 | pendens of such proceedings prosecuted to a judicial sale
53 | remains in effect through the recording of any instrument
54 | transferring title to the property pursuant to the final
55 | judgment unless it expires, is withdrawn, or it is otherwise
56 | discharged. If the notice of lis pendens expires or is withdrawn
57 | or discharged, the expiration, withdrawal, or discharge of the
58 | notice does not affect the validity of any unrecorded interest
59 | or lien.

60 | Section 2. This act is intended to clarify existing law
61 | and shall apply to actions pending on the effective date of this
62 | act.

63 | Section 3. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 91 (2019)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative Altman offered the following:

Amendment (with title amendment)

Remove lines 60-63 and insert:

Section 2. The changes made by this act to s. 48.23, Florida Statutes, are intended to clarify existing law and shall apply to actions pending on the effective date of this act.

Section 3. Subsection (1) of section 48.021, Florida Statutes, is amended to read:

48.021 Process; by whom served.—

(1) All process shall be served by the sheriff of the county where the person to be served is found, except ~~initial~~ nonenforceable civil process, criminal witness subpoenas, and criminal summonses may be served by a special process server appointed by the sheriff as provided ~~for~~ in this section or by a

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certified process server as provided ~~for~~ in s. 48.27 ~~ss. 48.25-~~
~~48.31~~. Civil witness subpoenas shall ~~may~~ be served by any person
authorized by rules of civil procedure.

Section 4. Subsections (2) and (5) and paragraph (a) of
subsection (6) of section 48.031, Florida Statutes, are amended
to read:

48.031 Service of process generally; service of witness
subpoenas.—

(2) (a) Substituted ~~Substitute~~ service ~~may be made~~ on the
spouse of the person to be served may be made at any place in a
~~the~~ county by an individual authorized under s. 48.021 or s.
48.27 to serve process in that county, if the cause of action is
not an adversarial ~~adversary~~ proceeding between the spouse and
the person to be served, if the spouse requests such service or
the spouse is also a party to the action, and if the spouse and
person to be served reside ~~are residing~~ together in the same
dwelling, regardless of whether such dwelling is located in the
county where substituted service is made.

(b) Substituted ~~Substitute~~ service may be made on an
individual doing business as a sole proprietorship at his or her
place of business, during regular business hours, by serving the
person in charge of the business at the time of service if two
attempts to serve the owner are ~~have been~~ made at the place of
business.

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41 (5) A person serving process shall place, on the first
42 page only of at least one of the processes served, the date and
43 time of service, his or her initials or signature, and, if
44 applicable, his or her identification number ~~and initials for~~
45 ~~all service of process. The person serving process shall list on~~
46 ~~the return of service form all initial pleadings delivered and~~
47 ~~served along with the process.~~ The person requesting service or
48 the person authorized to serve the process shall file the
49 return-of-service form with the court.

50 (6)(a) If the only address for a person to be served which
51 is discoverable through public records is a private mailbox, a
52 virtual office, or an executive office or mini suite,
53 substituted ~~substitute~~ service may be made by leaving a copy of
54 the process with the person in charge of the private mailbox,
55 virtual office, or executive office or mini suite, but only if
56 the process server determines that the person to be served
57 maintains a mailbox, a virtual office, or an executive office or
58 mini suite at that location.

59 Section 5. Subsection (4) of section 48.062, Florida
60 Statutes, is amended to read:

61 48.062 Service on a limited liability company.—

62 (4) If the address ~~provided~~ for the registered agent,
63 member, or manager is a residence, a ~~or~~ private mailbox, a
64 virtual office, or an executive office or mini suite, service on
65 the domestic or foreign limited liability company, ~~domestic or~~

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66 ~~foreign~~, may be made by serving the registered agent, member, or
67 manager in accordance with s. 48.031.

68 Section 6. Subsection (1) of section 48.194, Florida
69 Statutes, is amended to read:

70 48.194 Personal service outside state.—

71 (1) Except as otherwise provided herein, service of
72 process on persons outside of this state shall be made in the
73 same manner as service within this state by any person ~~officer~~
74 authorized to serve process in the state where the person is
75 served. No order of court is required. ~~A An affidavit of the~~
76 ~~officer shall be filed, stating the time, manner, and place of~~
77 ~~service. The~~ court may consider the return-of-service form
78 described in s. 48.21 affidavit, or any other competent
79 evidence, in determining whether service has been properly made.
80 Service of process on persons outside the United States may be
81 required to conform to the provisions of the Hague Convention on
82 the Service Abroad of Judicial and Extrajudicial Documents in
83 Civil or Commercial Matters.

84 Section 7. Subsection (1) of section 48.21, Florida
85 Statutes, is amended to read:

86 48.21 Return of execution of process.—

87 (1) Each person who effects service of process shall note
88 on a return-of-service form attached thereto, the date and time
89 when it comes to hand, the date and time when it is served, the
90 manner of service, the name of the person on whom it was served,

Amendment No.

91 and, if the person is served in a representative capacity, the
92 position occupied by the person. The return-of-service form must
93 list all pleadings served and be signed by the person who
94 effects the service of process. However, a person who is
95 authorized under this chapter to serve process and ~~employed by a~~
96 ~~sheriff~~ who effects such ~~the~~ service of process may sign the
97 return-of-service form using an electronic signature ~~certified~~
98 ~~by the sheriff.~~

99 Section 8. This act shall take effect upon becoming law.

100 -----
101
102 **T I T L E A M E N D M E N T**

103 Remove everything before the enacting clause and insert:

104 A bill to be entitled

105 An act relating to judicial process; amending s.
106 48.23, F.S.; providing that a person who acquires for
107 value a lien on property during the course of
108 specified legal actions takes such lien free of claims
109 in certain circumstances; specifying the effect of a
110 valid, recorded notice of lis pendens in certain
111 circumstances involving a judicial sale; providing
112 applicability; amending s. 48.021, F.S.; revising
113 authority of special process servers; revising a
114 cross-reference; requiring that civil witness
115 subpoenas be served by certain persons; amending s.

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116 48.031, F.S.; revising requirements for substituted
117 service on the spouse of the person to be served;
118 revising requirements for documenting service of
119 process; conforming terminology; amending s. 48.062,
120 F.S.; revising requirements for service on limited
121 liability companies; amending s. 48.194, F.S.;
122 revising provisions specifying who may serve process
123 outside of the state; revising requirements for
124 documenting that service has been properly made
125 outside the state; amending s. 48.21, F.S.; revising
126 requirements for return-of-service forms; authorizing
127 certain persons to electronically sign return-of-
128 service forms; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 249 Repeal of Constitution Revision Commission
SPONSOR(S): Drake, Brad and others
TIED BILLS: HB 251 **IDEN./SIM. BILLS:** SJR 362

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Jones <i>WJT</i>	Poche <i>MP</i>
2) State Affairs Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida voters can amend the state Constitution by approving an amendment originating from one of five sources: the Legislature, the Constitution Revision Commission (CRC), the Taxation and Budget Reform Commission (TBRC), a citizen initiative, or a constitutional convention. The Constitution requires that the CRC meet every 20 years. The CRC has authority to propose to voters a revision of all or any part of the Florida Constitution. In the 2018 general election, seven proposals from the CRC were placed on the ballot.

HJR 249 abolishes the CRC by repealing the constitutional provisions that establish it.

The joint resolution has a nonrecurring fiscal impact on the Department of State for the publication of the proposed constitutional amendment in newspapers of general circulation in each county and for publication of booklets or posters with the amendment language for use in polling places, as required by s. 101.171, F.S.

The joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 3, 2020. If adopted at the 2020 general election, the resolution would take effect January 5, 2021.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature to appear on the next general election ballot. If placed on the ballot, the Constitution requires 60 percent voter approval for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Constitution Revision Commission

The Florida Constitution is the charter of the liberties of Floridians.¹ It may be amended only if the voters approve an amendment originating from the Legislature, the Constitution Revision Commission (CRC), the Taxation and Budget Reform Commission (TBRC), a citizen initiative, or a constitutional convention.²

The Florida Constitution was revised extensively in 1968 by three joint resolutions proposed by the Legislature and approved by the voters. The revisions included establishing the CRC as a means of proposing constitutional revisions to the voters, and the requirement that it convene once every 20 years, beginning in 1977. Three CRCs have convened, in 1977-1978, 1997-1998, and 2017-2018.³ The CRC has authority to propose to voters a revision of all or any part of the Florida Constitution.⁴

The CRC is composed of the following 37 members:

- The Attorney General.
- Fifteen members selected by the Governor.
- Nine members selected by the President of the Senate.
- Nine members selected by the Speaker of the House of Representatives.
- Three members selected by the Chief Justice of the Florida Supreme Court.⁵

The Governor must appoint a chair from among the 37 members.⁶ The CRC's task is to examine the Constitution and decide which, if any, amendments to propose to the voters. The amendments must be submitted to the Secretary of State at least 180 days before the next general election.⁷ In turn, the amendments must be submitted to the voters at the next general election held more than 90 days after submission to the Secretary of State.⁸ To become effective, an amendment must be approved by at least 60 percent of the votes cast on the measure.⁹ If an amendment's effective date is not specified, it is effective the first Tuesday after the first Monday in January following the general election.¹⁰

Bundling or "Logrolling"

The Constitution requires each citizen initiative proposal to be limited to one subject.¹¹ This prevents bundling multiple issues into one proposal, also known as "logrolling." However, neither the CRC nor the TBRC is prohibited from bundling or logrolling.¹² Speaking specifically to the CRC, the Florida Supreme Court recently held:

¹ *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations omitted).

² Art. XI, Fla. Const.

³ Constitution Revision Commission, History, <http://flcra.gov/about/history.html> (last visited Feb. 7, 2019).

⁴ Art. XI, s. 2(c), Fla. Const.

⁵ Art. XI, s. 2(a), Fla. Const.

⁶ Art. XI, s. 2(b), Fla. Const.

⁷ Art. XI, s. 2(c), Fla. Const.

⁸ Art. XI, s. 5(a), Fla. Const.

⁹ Art. XI, s. 5(e), Fla. Const.

¹⁰ *Id.*

¹¹ Art. XI, s. 3, Fla. Const.

¹² Art. XI, ss. 2, 6, Fla. Const.

Unlike proposed amendments that originate through initiative petitions, amendments proposed by the Constitution Revision Commission are not bound by the single-subject rule limiting amendments to one subject. . . . the Florida Constitution expressly authorizes bundling, as it gives the Commission authority to revise the entire constitution or any part of it. The power to amend the whole constitution in one proposal necessarily includes the lesser power to amend parts of the constitution in one proposal.¹³

The most recent CRC convened in 2017-2018 and proposed eight amendments to the Florida Constitution, seven of which appeared on the 2018 general election ballot.¹⁴ Some of the proposals contained multiple unrelated subjects,¹⁵ requiring voters to decide whether to vote for an amendment that combined changes they liked with unrelated changes they did not like. One proposal, for example, combined a proposal to ban drilling for oil with a ban on vaping in indoor workplaces.

Effect of Proposed Changes

HJR 249 abolishes the CRC by repealing the constitutional provisions that establish it. The joint resolution does not change the other methods to amend the Constitution—through a legislative joint resolution, the TBRC, a citizen initiative, or a constitutional convention.

The joint resolution must pass each chamber with a three-fifths vote before it may be placed on the ballot. Thereafter, it must be approved by 60 percent of the electors voting on the measure. If approved by the voters, the joint resolution will take effect January 5, 2021.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, s. 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The Division of Elections must advertise the full text of the amendment twice in a newspaper of general circulation in each county where the amendment will appear on the ballot. The Division must also provide each Supervisor of Elections with either booklets or posters displaying the full text of each proposed amendment,¹⁶ regardless of whether the amendment passes.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹³ *Detzner v. Anstead*, 256 So. 3d 820, 823-24 (Fla. 2018).

¹⁴ Constitution Revision Commission, CRC Office – Press Release, <http://flcrc.gov/Media/PressReleases/Show/1099.html> (last visited Feb. 7, 2019); *Detzner v. League of Women Voters of Florida*, 256 So. 3d 803 (Fla. 2018) (removing Revision 8 from the ballot).

¹⁵ Fred Grimm, *Florida Ballot Proposals Bundled with Disparate Subjects, Deceptive Wording*, SUN SENTINEL (Apr. 27, 2018), <http://www.sun-sentinel.com/opinion/fl-op-column-fred-grimm-florida-ballot-proposals-20180426-story.html>.

¹⁶ See s. 101.171, F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The mandates provision applies only to general laws, not a joint resolution to amend the Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HJR 249

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House Joint Resolution

A joint resolution proposing an amendment to Section 5 of Article II and the repeal of Section 2 of Article XI of the State Constitution which provides for the establishment, membership selection and composition, and duties of the Constitution Revision Commission.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 5 of Article II and the repeal of Section 2 of Article XI of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE II

GENERAL PROVISIONS

SECTION 5. Public officers.—

(a) No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may

hold another office, and any officer may be a member of a
~~constitution revision commission~~, taxation and budget reform
 commission, constitutional convention, or statutory body having
 only advisory powers.

(b) Each state and county officer, before entering upon
 the duties of the office, shall give bond as required by law,
 and shall swear or affirm:

"I do solemnly swear (or affirm) that I will support,
 protect, and defend the Constitution and Government of the
 United States and of the State of Florida; that I am duly
 qualified to hold office under the Constitution of the state;
 and that I will well and faithfully perform the duties of
 ...(title of office)... on which I am now about to enter. So
 help me God.",
 and thereafter shall devote personal attention to the duties of
 the office, and continue in office until a successor qualifies.

(c) The powers, duties, compensation and method of payment
 of state and county officers shall be fixed by law.

BE IT FURTHER RESOLVED that the following statement be
 placed on the ballot:

CONSTITUTIONAL AMENDMENTS

ARTICLE II, SECTION 5

ARTICLE XI, SECTION 2

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50 REPEAL OF THE CONSTITUTION REVISION COMMISSION.—Proposing
51 amendments to the State Constitution to repeal the
52 establishment, membership selection and composition, and duties
53 of the constitution revision commission.

COMMITTEE/SUBCOMMITTEE AMENDMENT

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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)

ADOPTED AS AMENDED _____ (Y/N)

ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative Drake offered the following:

Amendment (with directory and schedule amendments)

Between lines 43 and 44, insert:

ARTICLE XI

AMENDMENTS

SECTION 5. Amendment or revision election.-

(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after either the effective date of the joint resolution proposing it or the date the ~~report of revision commission,~~ constitutional convention or taxation and budget reform commission proposal ~~proposing it~~ is filed with the custodian of state records, unless, pursuant to law enacted by the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 249 (2019)

Amendment No.

17 affirmative vote of three-fourths of the membership of each
18 house of the legislature and limited to a single amendment or
19 revision, it is submitted at an earlier special election held
20 more than ninety days after such filing.

21 (b) A proposed amendment or revision of this constitution,
22 or any part of it, by initiative shall be submitted to the
23 electors at the general election provided the initiative
24 petition is filed with the custodian of state records no later
25 than February 1 of the year in which the general election is
26 held.

27 (c) The legislature shall provide by general law, prior to
28 the holding of an election pursuant to this section, for the
29 provision of a statement to the public regarding the probable
30 financial impact of any amendment proposed by initiative
31 pursuant to section 3.

32 (d) Once in the tenth week, and once in the sixth week
33 immediately preceding the week in which the election is held,
34 the proposed amendment or revision, with notice of the date of
35 election at which it will be submitted to the electors, shall be
36 published in one newspaper of general circulation in each county
37 in which a newspaper is published.

38 (e) Unless otherwise specifically provided for elsewhere
39 in this constitution, if the proposed amendment or revision is
40 approved by vote of at least sixty percent of the electors
41 voting on the measure, it shall be effective as an amendment to

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Amendment No.

or revision of the constitution of the state on the first
Tuesday after the first Monday in January following the
election, or on such other date as may be specified in the
amendment or revision.

D I R E C T O R Y A M E N D M E N T

Remove line 10 and insert:

That the following amendments to Section 5 of Article II and
Section 5 of Article XI and

S C H E D U L E A M E N D M E N T

Between lines 49 and 50, insert:

ARTICLE XI, SECTION 5

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 251 Constitution Revision Commission
SPONSOR(S): Drake, Brad
TIED BILLS: HJR 249 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Jones <i>WJS</i>	Poche <i>MP</i>
2) State Affairs Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida voters can amend the state Constitution by approving an amendment originating from one of five sources: the Legislature, the Constitution Revision Commission (CRC), the Taxation and Budget Reform Commission (TBRC), a citizen initiative, or a constitutional convention. The Constitution requires that a CRC be established every 20 years. The CRC has authority to propose to voters a revision of all or any part of the Florida Constitution.

HJR 249 proposes amending the Florida Constitution to abolish the CRC. Sections 101.161, 112.3215, and 286.035, F.S., contain references to the CRC.

HB 251 implements the repeal of the CRC, if approved by the voters by the next general election, by removing all references to the CRC in sections 101.161, 112.3215, and 286.035, F.S.

The bill does not appear to have a fiscal impact on state or local government.

The bill is effective contingent upon HJR 249 or a substantially similar amendment being approved by the next general election, in which case the bill is effective when HJR 249 or the similar amendment is effective.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida voters can amend the state Constitution by approving an amendment originating from one of five sources: the Legislature, the Constitution Revision Commission (CRC), the Taxation and Budget Reform Commission (TBRC), a citizen initiative, or a constitutional convention.¹ The Constitution requires that a CRC be established every 20 years. The CRC has authority to propose to voters a revision of all or any part of the Florida Constitution.² In the 2018 general election, seven proposals from the CRC were placed on the ballot.³

Recently-filed HJR 249 proposes amending the Florida Constitution to abolish the CRC. Currently, various statutes refer to the CRC or establish CRC processes:

- S. 101.161, F.S., which refers to the CRC in the context of requirements for constitutional measures and ballot summaries;
- S. 112.3215, F.S., which includes within the definition of "agency" the CRC for lobbying purposes; and
- S. 286.035, F.S., which authorizes the CRC chair to employ personnel and incur official expenses, and which directs state and local agencies to assist the CRC.

Effective of Proposed Changes

HB 251 implements the repeal of the CRC by repealing s. 286.035, F.S. in its entirety, and by amending ss. 101.161 and 112.3215, F.S., to remove all references to the CRC within those statutes.

The bill is effective contingent upon HJR 249 or a substantially similar amendment being approved by the next general election, in which case the bill is effective when HJR 249 or the similar amendment is effective.

B. SECTION DIRECTORY:

Section 1: Amends s. 101.161, F.S., relating to referenda; ballots.

Section 2: Amends s. 112.3215, F.S., relating to lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.

Section 3: Repeals s. 286.035, F.S., relating to Constitution Revision Commission; powers of chair; assistance by state and local agencies.

Section 4: Provides a contingent effective date of the date HJR 249 or a substantially similar amendment is effective.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹ Art. XI, Fla. Const.

² Art. XI, s. 2, Fla. Const.

³ Constitution Revision Commission, CRC Office – Press Release, <http://flcrc.gov/Media/PressReleases/Show/1099.html> (last visited Feb. 7, 2019); *Detzner v. League of Women Voters of Florida*, 256 So. 3d 803 (Fla. 2018) (removing Revision 8 from the ballot).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to the constitution revision
3 commission; repealing s. 286.035, F.S., relating to
4 the Constitution Revision Commission, the powers of
5 the chair, and assistance by state and local agencies;
6 amending ss. 101.161 and 112.3215, F.S.; conforming
7 provisions to changes made by the act; providing a
8 contingent effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:
11

12 Section 1. Subsection (1) of section 101.161, Florida
13 Statutes, is amended to read:

14 101.161 Referenda; ballots.—

15 (1) Whenever a constitutional amendment or other public
16 measure is submitted to the vote of the people, a ballot summary
17 of such amendment or other public measure shall be printed in
18 clear and unambiguous language on the ballot after the list of
19 candidates, followed by the word "yes" and also by the word
20 "no," and shall be styled in such a manner that a "yes" vote
21 will indicate approval of the proposal and a "no" vote will
22 indicate rejection. The ballot summary of the amendment or other
23 public measure and the ballot title to appear on the ballot
24 shall be embodied in the ~~constitutional revision commission~~
25 ~~proposal~~, constitutional convention proposal, taxation and

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budget reform commission proposal, or enabling resolution or ordinance. The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(5). The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of. This subsection does not apply to constitutional amendments or revisions proposed by joint resolution.

Section 2. Paragraphs (a) and (f) of subsection (1) of section 112.3215, Florida Statutes, are amended to read:

112.3215 Lobbying before the executive branch ~~or the Constitution Revision Commission~~; registration and reporting; investigation by commission.—

(1) For the purposes of this section:

(a) "Agency" means the Governor, Governor and Cabinet, or any department, division, bureau, board, commission, or authority of the executive branch. ~~In addition, "agency" shall mean the Constitution Revision Commission as provided by s. 2, Art. XI of the State Constitution.~~

(f) "Lobbies" means seeking, on behalf of another person,

51 | to influence an agency with respect to a decision of the agency
52 | in the area of policy or procurement or an attempt to obtain the
53 | goodwill of an agency official or employee. ~~"Lobbies" also means~~
54 | ~~influencing or attempting to influence, on behalf of another,~~
55 | ~~the Constitution Revision Commission's action or nonaction~~
56 | ~~through oral or written communication or an attempt to obtain~~
57 | ~~the goodwill of a member or employee of the Constitution~~
58 | ~~Revision Commission.~~

59 | Section 3. Section 286.035, Florida Statutes, is repealed.

60 | Section 4. This act shall take effect on the effective
61 | date of the amendment to the State Constitution proposed by HJR
62 | 249 or a similar joint resolution having substantially the same
63 | specific intent and purpose, if such amendment to the State
64 | Constitution is approved at the next general election or at an
65 | earlier special election specifically authorized by law for that
66 | purpose.